

Ellsberg Trial Resumes Today; Basic Issues Seen at Stake

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LOS ANGELES, Jan. 16—
With a new jury and a determination to score points against American involv-

ment in Vietnam, Daniel Ellsberg and Anthony J. Russo Jr. go on trial in federal court here for disclosing the top-secret Pentagon Papers.

It has been 19 months since the Nixon administration failed in its efforts to stop newspaper publication of the Defense Department history of the U.S. role in Southeast Asia.

But only now will many of the issues they posed—including government secrecy and restrictions on the First Amendment's guarantee of freedom of the press—be litigated and perhaps tentatively resolved.

Ellsberg and Russo are charged in a 15-count indictment with conspiracy, espionage and theft of government property.

The case was brought to Los Angeles because the government contends that it was in this federal judicial district that the defendants, both former researchers at the Rand Corp. "think-tank" in Santa Monica, conducted their illegal conspiracy between March, 1969 and September, 1970.

There is no mention in the indictment of how the Washington Post, the New York Times and other newspapers obtained the secret study, a matter that has been the focus of another, currently suspended, federal grand jury investigation in Boston.

Rather, the case centers on Ellsberg's and Russo's dealings with each other, with Lynda Sinay, the Los Angeles advertising woman who rented them a photoco-

pying machine to duplicate the papers, and with Vu Van Thai, a former South Vietnamese ambassador to Washington to whom Ellsberg allegedly showed one of the most sensitive of the study's 47 volumes.

The trial, much delayed by debate over legal issues, disclosures of government wiretaps that overheard a defense attorney and dismissal of the first jury before it heard a word of evidence, is expected to be long—perhaps two months or more—dramatic and emotional.

Unlike the controversial Chicago and Harrisburg conspiracy cases against anti-war activists, there will be no secret government informers and relatively little dispute over the facts charged in the indictment.

But with major questions of public policy at stake, the Pentagon Papers trial could become one of the most significant court battles of the Vietnam war period.

Ellsberg and Russo have come to realize that their disclosure of the Pentagon Papers probably had only minimal effect on the course of the Vietnam war.

Their team of seven defense lawyers feels that the same is true of the trial, that the court proceedings themselves cannot realistically be expected to influence the peace negotiations or their outcome.

Still, the defendants hope they will be able to talk of their intentions and motives, of their own conversion on the war after their exposure to it in Vietnam and at home, thus intensifying the national revulsion to the conflict.

Over the months, however, other matters that have little to do with Ellsberg and Russo personally have come to the forefront, and these are some of the

questions that may be decided by a conviction or acquittal in the case:

Is information itself, when classified, actually "government property" as implied by the indictment, or does it belong to the people as a whole?

Does the much-abused government security classification system—under which thousands of people can put documents into perpetual secrecy by using a rubber stamp—have the force of law, although it is embodied in presidential executive orders rather than acts of Congress?

Can the government be "defrauded" of "its lawful governmental function of controlling the dissemination of government studies," as charged in the indictment, whenever someone leaks or mishandles a document stamped secret?

Can it legitimately be called "espionage," and punished as such, when a person with a security clearance shows classified materials to others who do not have such a clearance?

Civil libertarians fear that if the answers to some or all of these questions is "yes," the United States will in effect have an Official Secrets Act of the sort that Congress has repeatedly refused to enact.

What is more, they warn that a conviction in this case could seriously impede the flow of information from dissident government officials to the public, through the press.

Indeed, if Russo is convicted for his role in the alleged conspiracy—essentially that of a "receiver"—similar charges could be filed against the journalists and newspapers that obtained the Pentagon Papers and other classified documents over the years.

The way chief prosecutor David R. Nissen tells it,

none of those issues—really is at stake in this trial, and the Ellsberg-Russo indictment poses just another routine criminal case like the tens of others he has tried.

But ranking Justice Department officials readily concede that they know better, that the implications of the case go far beyond the indictment. They say that the Nixon administration has merely decided that the time has come to assert federal authority and stem the tide of leaks to the press.